Siti Aisyah bt Yusuf v Attorney General Malaysia & Ors

HIGH COURT (KOTA KINABALU) — ORIGINATING SUMMONS NO BKI-24–45/3 OF 2022
LEONARD SHIM J
17 AUGUST 2023

Citizenship — Act of deprivation — Whether null and void — Plaintiff who was issued birth certificate ('BC') describing her as Malaysian citizen subsequently discovered issuance of second BC ('BC2') describing her as 'Non-Citizen' — Whether neither National Registration Department nor Registrar of Births and Deaths had power under law to unilaterally revoke plaintiff's first BC or deprive her of citizenship — Whether BC2 was unconstitutional and null and void — Whether proper procedures under arts 24 to 27 of Federal Constitution ('FC') must be followed to deprive person of citizenship — Whether plaintiff had proven on balance of probabilities that she was Malaysian citizen by operation of law under art 14(1)(b) read with s 1(a) and/or s 1(e) of Part II of Second Schedule of FC and/or s 17 of Part III of Second Schedule of FC

In the instant application, the plaintiff sought reinstatement of her first birth certificate ('BC1') as well as her status as a Malaysian citizen. She claimed that the authorities had unilaterally altered and/or revoked both BC1 and her citizenship status in contravention of Chapter II and art 27 of the Federal Constitution ('the FC'). The plaintiff's parents were not married when she was born. It was alleged that three years after the plaintiff's birth, her mother left her and she was raised solely by her father until he died in 2018, when the plaintiff was 17 years old. The registration of the plaintiff's birth was done six years after her birth and the document evidencing it described her status as 'Citizen' in reliance upon which the plaintiff attended school up to Form Five. When the plaintiff went to the National Registration Department ('JPN') to apply for her identity card, she discovered that she had been issued with a new birth certificate ('BC2') in which she was described as 'Non-Citizen'. The decision to amend her status had apparently been made pursuant to s 30(2) of the Registration of Births and Deaths Ordinance 1966 ('RBDO'). The plaintiff contended that neither the JPN nor the Registrar of Births and Deaths had power under the law to unilaterally alter/revoke her citizenship status stated in BC1. The plaintiff asserted that she was a Malaysian citizen by operation of law as she was born within the Federation after Malaysia Day to a Malaysian mother. The defendants, however, disputed that argument on the ground that the plaintiff had failed to prove that her biological mother was a Malaysian citizen and that the mere fact that the plaintiff was born within the Federation did not qualify her for citizenship by operation of law.

Held, allowing the plaintiff's application, ordering the defendants to reinstate the plaintiff's BC1 and declaring that: (a) BC2 was null and void for being a revocation of the plaintiff's citizenship in contravention of Chapter II and the procedures in art 27 of the FC; and (b) the plaintiff was a Malaysian citizen pursuant to BC1 and/or by operation of law under art 14(1)(b) read with s 1(a) and/or s 1(e) of Part II of the Second Schedule of the FC and/or s 17 of Part III of the Second Schedule of the FC:

(1) The unilateral change of the status of the plaintiff from 'Citizen' in BC1 to 'Non-Citizen' in BC2 was tantamount to the plaintiff not being given any prior notice of deprivation of her citizenship. Nothing in the RBDO empowered the JPN or the Registrar of Births and Deaths to revoke the plaintiff's citizenship by amending her birth certificate (see paras 45–46).

(2) The plaintiff did not apply to amend her citizenship status in BC1 but had merely applied for an NRIC/MyKad. No statutory declaration ('SD') for amendment stating the nature of the error and the facts of the case as required by s 30(3) of the RBDO was produced or exhibited by the defendants in their affidavit in opposition. In the absence of any SD as required by the RBDO, there was no evidence to show that the amendment was due to any clerical error or error of fact or substance. Further, the JPN or the second and third defendants were not empowered by law to unilaterally revoke the plaintiff's citizenship by amending her birth certificate. Neither did the JPN or the defendants take any step to revoke the applicant's citizenship under arts 24 to 27 of the FC if they had valid grounds to do so. It was clear that the deprivation of the plaintiff's citizenship was not done in accordance with the procedure prescribed by art 27 of the FC. The defendants' actions were therefore unconstitutional and void (see paras 50 & 52).

(3) The particulars of the plaintiff's mother ('Khamsia') in BC1 and BC2 corresponded with that stated in the plaintiff's Kad Klinik, which contained the medical records of the plaintiff's birth. The Kad Klinik was given to the JPN when BC1 was applied for. The defendants had the resources to check to confirm the authenticity or veracity of the Kad Klinik but they did not do so; neither did they adduce any evidence to show the Kad Klinik was not genuine or accurate. The records showed that the Khamsia described in the Kad Klinik was the same person to whom the JPN had issued an NRIC/MyKad and was also the same person registered as a voter with the Elections Commission. The plaintiff had proven on balance of probabilities that the Kad Klinik was authentic and that the details stated therein including the name and identity card number of the plaintiff's biological mother were correct. The NRIC/MyKad of Khamsia shows that she was a Malaysian citizen. Accordingly, the plaintiff had satisfied the requirement of 'jus soli' and 'jus sanguinis' and was entitled to citizenship by operation of law under

art 14(1)(b) read with s 1(a) of Part II and s 17 of Part III of the Second Schedule of the FC (see paras 54–56).

(4) The evidence showed that the plaintiff had also satisfied the requirement in s 1(e) of Part II of the Second Schedule of the FC in that having been born in the Federation after Malaysia Day, she was not born a citizen of any other country and neither was she accorded citizenship of any other country within one year of her birth. Although the plaintiff had lived all her life in Malaysia, the fact that she was classified as 'Non-Citizen' in BC2 would make her stateless and that would not be in her best interests and welfare. In the premises, the plaintiff also qualified for citizenship by operation of law pursuant to art 14(1)(b) read with s 1(e) and s 2(3) of Part II of the Second Schedule of the FC (see para 72).

[Bahasa Malaysia summary

Dalam permohonan ini, plaintif memohon pengembalian semula sijil kelahiran pertamanya ('BC1') serta statusnya sebagai warganegara Malaysia. Dia mendakwa bahawa pihak berkuasa telah mengubah dan/atau membatalkan kedua-dua BC1 dan status kewarganegaraannya secara unilateral bertentangan dengan Bab II dan perkara 27 Perlembagaan Persekutuan ('PP'). Ibu bapa plaintif tidak berkahwin semasa dia dilahirkan. Ianya dikatakan bahawa, tiga tahun selepas kelahiran plaintif, ibunya telah meninggalkannya dan dia dibesarkan oleh bapanya sehingga beliau meninggal dunia pada 2018, ketika plaintif berusia 17 tahun. Pendaftaran kelahiran plaintif dilakukan enam tahun selepas kelahirannya dan dokumen yang membuktikannya menggambarkan statusnya sebagai 'Warganegara' bergantung kepada plaintif bersekolah sehingga Tingkatan Lima. Apabila plaintif pergi ke Jabatan Pendaftaran Negara ('JPN') untuk memohon kad pengenalannya, dia mendapati dia telah dikeluarkan dengan sijil kelahiran baharu ('BC2') di mana dia disifatkan sebagai 'Bukan Warganegara'. Keputusan untuk meminda statusnya nampaknya telah dibuat menurut s 30(2) Ordinan Pendaftaran Kelahiran dan Kematian 1966 ('OPKK'). Plaintif berhujah bahawa JPN mahupun Pendaftar Kelahiran dan Kematian tidak mempunyai kuasa di bawah undang-undang untuk mengubah/membatalkan status kewarganegaraannya secara unilateral yang dinyatakan dalam BC1. Plaintif menegaskan bahawa dia adalah warganegara Malaysia mengikut kuat kuasa undang-undang kerana dia dilahirkan dalam Persekutuan selepas Hari Malaysia kepada seorang ibu Malaysia. Defendan, bagaimanapun, mempertikaikan hujah itu atas alasan bahawa plaintif gagal membuktikan bahawa ibu kandungnya adalah warganegara Malaysia dan fakta bahawa plaintif dilahirkan dalam Persekutuan tidak melayakkannya untuk kewarganegaraan mengikut kuat kuasa undang-undang.

Diputuskan, membenarkan permohonan plaintif, memerintahkan defendan untuk mengembalikan semula BC1 plaintif dan mengisytiharkan bahawa:

(a) BC2 adalah terbatal dan tidak sah atas sebab pembatalan kewarganegaraan plaintif yang melanggar Bab II dan prosedur dalam perkara 27 PP; dan (b) plaintif adalah warganegara Malaysia menurut BC1 dan/atau melalui kuat kuasa undang-undang di bawah perkara 14(1)(b) dibaca dengan s 1(a) dan/atau s 1(e) Bahagian II Jadual Kedua PP dan/atau s 17 Bahagian III Jadual Kedua PP:

(1) Perubahan unilateral status plaintif daripada 'Warganegara' di BC1 kepada 'Bukan Warganegara' di BC2 adalah terjumlah kepada plaintif tidak diberi apa-apa notis awal pelucutan kewarganegaraannya. Tiada apa-apa dalam OPKK memberi kuasa kepada JPN atau Pendaftar Kelahiran dan Kematian untuk membatalkan kewarganegaraan plaintif dengan meminda sijil kelahirannya (lihat perenggan 45–46).

(2) Plaintif tidak memohon untuk meminda taraf kewarganegaraannya di BC1 tetapi hanya memohon untuk mendapatkan NRIC/MyKad. Tiada akuan berkanun ('SD') untuk pindaan yang menyatakan jenis kesilapan dan fakta kes seperti yang dikehendaki oleh s 30(3) OPKK telah dikemukakan atau dipamerkan oleh defendan dalam afidavit pembangkang mereka. Sekiranya tiada sebarang SD seperti yang dikehendaki oleh OPKK, tiada bukti yang menunjukkan bahawa pindaan itu disebabkan oleh sebarang kesilapan perkeranian atau kesilapan fakta atau bahan. Selanjutnya, JPN atau defendan kedua dan ketiga tidak diberi kuasa oleh undang-undang untuk membatalkan kewarganegaraan plaintif secara unilateral dengan meminda sijil kelahirannya. JPN atau defendan tidak mengambil sebarang langkah untuk membatalkan kewarganegaraan pemohon di bawah perkara 24 hingga 27 PP jika mereka mempunyai alasan yang sah untuk berbuat demikian. Adalah jelas bahawa pelucutan kewarganegaraan plaintif tidak dilakukan mengikut prosedur yang ditetapkan oleh perkara 27 PP. Oleh itu, tindakan defendan adalah tidak berperlembagaan dan tidak sah (lihat perenggan 50 & 52).

(3) Butiran ibu plaintif ('Khamsia') dalam BC1 dan BC2 sepadan dengan yang dinyatakan dalam Kad Klinik plaintif, yang mengandungi rekod perubatan kelahiran plaintif. Klinik Kad telah diberikan kepada JPN semasa BC1 dipohon. Defendan mempunyai sumber untuk menyemak untuk mengesahkan ketulenan atau kebenaran Klinik Kad tetapi mereka tidak berbuat demikian; mereka juga tidak mengemukakan sebarang bukti untuk menunjukkan Klinik Kad itu tidak tulen atau tepat. Rekod menunjukkan bahawa Khamsia yang diterangkan di Klinik Kad adalah orang yang sama yang JPN telah mengeluarkan NRIC/MyKad dan juga orang yang sama berdaftar sebagai pemilih dengan Suruhanjaya Pilihan Raya. Plaintif telah membuktikan berdasarkan imbangan kebarangkalian bahawa Klinik Kad adalah sahih dan butiran yang dinyatakan di dalamnya termasuk nama dan nombor kad pengenalan ibu kandung

plaintif adalah betul. NRIC/MyKad Khamsia menunjukkan bahawa dia adalah warganegara Malaysia. Sehubungan itu, plaintif telah memenuhi keperluan 'jus soli' dan 'jus sanguinis' dan berhak mendapat kewarganegaraan melalui kuat kuasa undang-undang di bawah perkara 14(1)(b) yang dibaca dengan s 1(a) Bahagian II dan s 17 Bahagian III Jadual Kedua PP (lihat perenggan 54–56).

(4) Keterangan menunjukkan bahawa plaintif juga telah memenuhi keperluan dalam s 1(e) Bahagian II Jadual Kedua PP iaitu setelah dilahirkan di Persekutuan selepas Hari Malaysia, dia tidak dilahirkan sebagai warganegara mana-mana negara lain dan dia juga tidak diberikan kewarganegaraan mana-mana negara lain dalam tempoh satu tahun kelahirannya. Walaupun plaintif telah tinggal sepanjang hayatnya di Malaysia, hakikat bahawa dia diklasifikasikan sebagai 'Bukan Warganegara' dalam BC2 akan menjadikan dia tidak bernegara dan itu tidak demi kepentingan dan kebajikannya. Di dalam premis itu, plaintif juga layak mendapat kewarganegaraan melalui kuat kuasa undang-undang menurut perkara 14(1)(b) dibaca dengan s 1(e) dan s 2(3) Bahagian II Jadual Kedua PP (lihat perenggan 72).]

Cases referred to

CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia [2022] 1 MLJ 71; [2022] 1 CLJ 1, FC (refd)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] 4 MLJ 236, FC (distd)

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29, FC (refd)

Farah Hani Sukor v Ketua Pengarah Jabatan Pendaftaran Negara, Malaysia & Ors [2023] MLJU 993; [2023] 1 LNS 898, HC (refd)

LKP & Anor v Pendaftar Besar Kelahiran dan Kematian, Malaysia [2023] 9 MLJ 242; [2023] 3 CLJ 243, HC (refd)

Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l Lourdsamy & Ors [2018] 1 MLJ 307; [2018] 4 CLJ 758, CA (refd)

OXT (a child applying through Ong Chin Hock, the biological father) v Pendaftar Besar Kelahiran dan Kematian Malaysia & Anor [2022] 11 MLJ 373; [2022] 6 CLJ 274, HC (refd)

Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See & Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child) [2017] 3 MLJ 308, CA (refd)

Pham v Secretary of State for the Home Department [2015] 3 All ER 1015, SC (refd)

Tan Lee Heng & Anor v Ketua Pengarah, Jabatan Pendaftaran Negara & Ors [2019] 8 CLJ 865, HC (refd)

The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals [2020] 4 MLJ 303; [2020] 3 CLJ 757, FC (refd)

Yong Lee Hua @ Piang Lin v Director of National Registration Sabah & Anor [2011] 3 MLJ 684; [2010] 1 LNS 1018, HC (refd)

Legislation referred to

Evidence Act 1950 s 101

Federal Constitution arts 5(1), 14, 14(1)(b), 15A, 24, 25, 26, 26A, 26B, 27, 27(1), 30(1), (3), 31 Chapter II, Second Schedule, Part II, ss 1, 1(a), (e), 2(3), Part III, ss 2, 17, 19B

Registration of the Births and Deaths Ordinance 1966 (Cap 123) ss 22(3), 30(2), (3)

Nurul Rafeeqa (Nurul Rafeeqa Advocates) for the plaintiff.

Noor Atiqah Zainal Abidin (Federal Counsel, Attorney Generals' Chambers) for the defendants.

Leonard Shim J:

INTRODUCTION

[1] This is an application for reinstatement of the plaintiff's birth certificate and citizenship which the plaintiff contends was unilaterally altered and/or revoked in contravention of Chapter II and the procedures in art 27 of the Federal Constitution.

BRIEF FACTUAL BACKGROUND

[2] The plaintiff is 21 years old born on 19 November 2001 to Khamsia Ridwan (mother) and Yusof bin Mahmud (father). The plaintiff's parents were not married at the time of birth of the plaintiff.

[3] Sometime in 2004, the mother left the plaintiff, leaving her father to raise her singlehandedly until the passing of her father in 2018.

[4] The plaintiff's birth registration was registered under late birth registration six years after her birth. The first and/or second and/or third defendant proceeded to issue a Late Birth Registration which states that her citizenship is 'WARGANEGARA' ('Birth Registration No 1'). Relying on Birth Registration No 1, the plaintiff attended school and sat for MUET and Sijil Pelajaran Malaysia (SPM).

[5] The plaintiff then endorsed her late birth certificate in which during the first application, the endorsement was rejected. Subsequently, it was approved and accepted as evidence on 23 June 2018.

[6] Since her father had passed away in 2018, one Nurul Faridah assisted the plaintiff to apply for Kad Pengenalan. The plaintiff and Nurul Faridah went to JPN to apply for Kad Pengenalan. After two years of waiting, they followed-up with JPN. Unbeknownst to the plaintiff, the second and/or third defendant had issued a new birth certificate which states her citizenship is 'BUKAN WARGANEGARA' ('Birth Registration No 2').

[7] The defendants premised their decision to amend the birth certification based on ss 30(2) and 22(3) of the Registration of the Births and Deaths Ordinance 1966 Sabah (Cap 123).

[8] The issues before the court are as follows:

(a) whether the defendants were empowered to amend the birth certificate No 1 and subsequently, revoke the plaintiff's citizenship;

(b) whether the plaintiff is entitled to citizenship by virtue of art 14(1)(b) read with s 1(a); and

(c) whether the plaintiff is entitled to citizenship by virtue of art 14(1)(b) read with s 1(e).

SUBMISSION OF THE PLAINTIFF

Question 1: Whether the defendants have the power to amend the birth certificate No 1 and subsequently, revoke the plaintiff's citizenship?

[9] The plaintiff contends that the amendment on the birth certificate was made unilaterally by way of revoking the plaintiff's citizenship.

[10] The plaintiff submit that although a citizenship may be terminated in accordance with Chapter II of the FC, in particular under art 26, this was not relied upon by the first respondent.

[11] The plaintiff submit that the revocation of the plaintiff's citizenship is not under the purview of the second and/or third defendants. There is no provision therein that empowered the Registrar of Births and Deaths to revoke the applicant's citizenship by amending her birth certificate from 'Warganegara' to 'Bukan Warganegara'.

[12] The amendment of her birth certificate was premised on s 30(2) of the

RBDO which states as follows:

> (2) Except as provided in subsection (4) any clerical error which may be discovered in any register shall be corrected by a Registrar who shall initial the entry in which such error has been discovered.

[13] Any error of fact and substance shall be made by way of statutory declaration made by two persons as dictated under s 30(3) of the RBDO:

> (3) Any error of fact or substance in any register may be corrected by entry (but so that no alteration on the original entry is made) by a Registrar on payment of the prescribed fee and on the production to him by the person requiring such error to be corrected of a statutory declaration setting forth the nature of the error and the facts of the case and made by two persons required by this Ordinance to give information concerning the birth or death with reference to which the error has been made, or, in default of such persons, then by two credible persons, to the satisfaction of the Registrar, having knowledge of the truth of the case, and the Registrar shall initial such entry and shall add thereto the day and the month and the year when such correction is made.

[14] In the present case, the amendment was not made by way of statutory declaration. In the defendants' defence in their affidavit in opposition, they argued that as at the time of her application for late birth registration, her citizenship was not decided ('BELUM DITENTUKAN'). Strangely, even though her citizenship was allegedly undecided at the material time, the second and/or third defendants proceeded to register her citizenship as 'WARGANEGARA'.

[15] The mother's IC was stated on the Kad Klinik as well as the birth certificate application. The note states 'diluluskan' based on the application.

[16] The plaintiff relied on s 17 of Part III of the Second Schedule of the Federal Constitution which provides that when it comes to an illegitimate child, the citizenship follows the mother. Keeping this in mind, the plaintiff submit that the Kad Klinik containing the plaintiff's mother's information, which was registered two months after the plaintiff's birth, serves as proof of her existence as the plaintiff's mother.

[17] Further, the plaintiff's mother's information exists within JPN's system and she is a recognised voter in the SPR system. The plaintiff contends that it is a well cognizant fact that only Malaysians are allowed to cast votes within the Federation. Taking into account of these factors, it can be concluded that the plaintiff's mother is in fact a Malaysian citizen and thus, the plaintiff will take after her mother's citizenship as a Malaysian national, pursuant to the aforementioned s 17 of Part III of the Second Schedule of the Federal Constitution as well as art 14(1)(b) read with s 1(a).

Question 2: Whether the plaintiff is entitled to citizenship by virtue of art 14(1)(b) read with s 1(a) and/or 1(e)

[18] In the event the court is of the view that the Kad Klinik does not prove the identity of the plaintiff's mother as well as the relationship between the plaintiff and one Khamsiah Ridwan, the plaintiff submit that the plaintiff is exposed in Sabah and have been born here of a mother permanently resident here as stated under s 19B of Part III of the FC. The plaintiff further submit the concept of citizenship is also a concept so inextricably linked to the right to life and personal liberty contained in art 5(1) of the Federal Constitution.

[19] In the case of *CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71; [2022] 1 CLJ 1, the court held that the interpretation of 'any new born child found exposed in any place' is to include a child abandoned at the place of birth by the birth mother whose identity is unknown. The excerpt of the judgment of *CCH* is as follows:

> [54] As such, the broadest possible interpretation of the word 'found exposed' is to accord it a meaning to include a child abandoned at the place of birth by the birth mother whose identity is unknown. The operative word 'exposed' in s 19B must therefore encompass the plight of abandoned new born children, otherwise the overarching intent of preventing statelessness would be defeated or rendered illusory.

[20] The plaintiff contends that the plaintiff's mother had abandoned her when she was a mere infant, at the tender age of three, and could not be located. The plaintiff contends that this would render the plaintiff an 'abandoned child' and there is no proof that she is a citizen of any other country. Pursuant to s 19B, children who are found abandoned in any given place, that place of abandonment will be treated as their place of birth. Therefore, under these grounds, learned counsel for the plaintiff submit that the plaintiff is entitled to a Malaysian citizenship by operation of law by virtue of s 1(a) of Part II read with s 19B of Part III.

[21] The plaintiff further submit that the respondents have failed to discharge the burden to prove that the plaintiff's mother is not a citizen of Malaysia nor a permanent resident at the place of finding. As far as the plaintiff is concerned, the identity of her mother, Khamsia Ridwan, is a Malaysian citizen.

[22] The plaintiff averred in her affidavit in reply that the Kad Klinik was supplied to the officer of the JPN during the interviews for the application for late registration as well as to the court for endorsement. The respondents in their affidavit in opposition, on the other hand, did not disclose what

transpired during the interview and the documents obtained from the plaintiff during the application for late birth registration. The respondents' only justification to amend the birth certificate to non-citizen is that the plaintiff failed to produce a marriage certificate of her parents.

[23] The respondents admitted in para 6(a) of the affidavit in opposition that they have no knowledge of the Kad Klinik of the plaintiff:

> (a) The Respondents have no knowledge of the Kad Klinik exhibited in 'SA2'.

[24] The plaintiff submits that the court in *CCH* emphasised the need for the respondent to conduct proper investigation to determine the status of one's biological parents or mother:

> When confronted with an application for registration of such new born children, the burden is on the respondent to undertake proper investigations to determine the status of such child's biological parents or mother. If, after investigation, it is found that the fact of abandonment is true, the respondent is obligated by the highest law of the land in section 19B of Part III ...

THE DEFENDANTS' SUBMISSION

Article 14(1)(b) of the Federal Constitution

[25] The plaintiff contends that she is a Malaysian citizen by operation of law pursuant to art 14(1)(b) read together with s 1(a) and/or s 1(e) of the Part II of the Second Schedule of the FC based on the following grounds:

(a) the plaintiff was born within the Federation of Malaysia; and

(b) the plaintiff was born to a Malaysian mother.

[26] The defendants submit that the plaintiff at this juncture is not eligible to acquire citizenship by operation of law under art 14(1)(b) of the FC on the following grounds:

(a) acquisition of citizenship under art 14(1)(b) read together with s 1(e) of Part II of the Second Schedule of the FC requires more than just a mere birth within the Federation of Malaysia; and

(b) the burden is on plaintiff to show that Khamsiah bt Ridwan (NRIC No 770922–12–5426) which NRIC exhibited as SA1 is the birth mother of the plaintiff.

[27] In determining citizenship of a person, both the concept of jus soli and the concept of jus sanguinis applied. This is explained by the Court of Appeal in the case of *Pendaftar Besar Kelahiran dan Kematian, Malaysia v Pang Wee See*

& Anor (applying on their behalf and as litigation representatives for Pang Cheng Chuen, a child) [2017] 3 MLJ 308.

[28] The defendants submit that since the child is an illegitimate person at the time of his birth, by virtue of s 17, Part III, Second Schedule of the FC, the word 'parent' in s 1(a), Part II, Second Schedule of the FC shall be construed as 'mother'.

[29] With regards to the fulfilment of the requisite qualification for citizenship as alluded to earlier, the plaintiff fulfilled two qualifications where she was born after the Malaysia Day and she was born within the Federation. However, the plaintiff at this juncture has to prove the third qualification because there is a question mark on the status of her biological mother.

[30] The defendants pointed out in the affidavit in opposition that the plaintiff's averment that the biological mother left the plaintiff since she was three and the mother's whereabouts are unknown is conflicting with the facts that the plaintiff had managed to exhibit the alleged mother's latest identity card. To that, the plaintiff replied that the alleged mother's latest identity card was obtained by her father from the mother's sibling.

[31] With that, it shows that the mother in actuality is traceable. At all material time, the burden is on plaintiff to show that Khamsiah bt Ridwan (NRIC No 770922–12–5426) which NRIC exhibited as SA1 is the birth mother of the plaintiff. It can be done by DNA test or any other means. It is crucial for the plaintiff to prove as such as her birth was only registered six years after she was born and at that material time, the plaintiff alleged that her mother had left her for three years and the whereabouts are unknown.

[32] Thus, the defendants contend that from the very beginning, it was never establish that Khamsiah bt Ridwan (NRIC No 770922–12–5426) which NRIC exhibited as SA1 is the birth mother of the plaintiff. Without further evidence, there is no proof that Khamsiah bt Ridwan (NRIC No 770922–12–5426) is the actual mother of the plaintiff.

[33] The defendants further refer this court to the recent majority decision of the Federal Court in the case of *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 ('CTEB') in which the following salient legal principles can be distilled from the majority decision:

(a) firstly, the acquisition of citizenship by operation of law under art 14 of the FC is based on the fulfillment of qualifications set out in the FC and such qualifications must be met at the time of birth;

(b) then, s 17, Part III, Second Schedule of the FC applies to s 1, Part II,

Second Schedule of the FC by virtue of the qualifying words in s 1, Part II, Second Schedule of the FC and by virtue of art 31 of the FC; and

(c) thirdly, s 17, Part III, Second Schedule of the FC is clear and unambiguous that the reference to 'parent' or 'father' in relation to an illegitimate child is to be construed as 'mother'. Therefore, an illegitimate child's citizenship follows the citizenship of his mother.

[34] The defendants submit that the plaintiff failed to show in her application that she is entitled to be a Malaysian citizen by operation of law under art 14(1)(b).

EVALUATION AND FINDINGS

Preliminary issues

[35] The defendants raised two preliminary issues in their submissions. Firstly, the defendants contend that the court has no jurisdiction on matters pertaining to citizenship pursuant to s 2 of Part III, Second Schedule and art 30(1) and (3) of the Federal Constitution. Secondly, this action concerns the issue of citizenship which is essentially a matter of public law and should be brought by way of judicial review and the originating summons herein is the wrong mode of commencement.

[36] It is not disputed that the present application premised on art 14(1)(b) read together with s 1(a) of Part II of Second Schedule as well as ss 1(e) and 2(3) of Part IIof Second Schedule of the Federal Constitution requires the constitutional interpretations from this court.

[37] In *OXT (a child applying through Ong Chin Hock, the biological father) v Pendaftar Besar Kelahiran dan Kematian Malaysia & Anor* [2022] 11 MLJ 373; [2022] 6 CLJ 274 where Justice Abdul Wahab Mohamed on the same issue deliberated as follows:

> (1) There was no prohibition to restrict this court from hearing the applicant's present application as the OS was not a review of the respondent's decision not to grant citizenship under art 15A of the FC. Instead, this application required a determination of the manner of interpretation of the FC to the facts of a case, a consideration of proportionality to best serve the intent of the FC and the manner or result in which the respondents applied the law based on the FC. The application under art 14(1)(b) of the FC was justiciable and the reasons in which the respondents refused citizenship to the applicant must be examined thoroughly in the interest of justice and constitutional proportionality.

[38] The plaintiff drew the court's attention to the case of *Madhuvita Janjara Augustin (suing through next friend Margaret Louisa Tan) v Augustin a/l*

Lourdsamy & Ors [2018] 1 MLJ 307; [2018] 4 CLJ 758 where the Court of Appeal held:

> [28] It is quite clear from the carefully worded terms of s 2 that the scrutiny of the court is only excluded where it concerns a Federal Constitution. It is apparent from the Records of Appeal that the court was not moved to hear an appeal or review of any decision made by the Federal Government under Part III, and that includes the Federal Government's rejection of the appellant's application for citizenship under s 15A. That decision of the Federal Government is not under challenge. In fact, no decision of the Federal Government is in the facts of the present appeal. It is further clear from the cause papers and submissions before us that the decision of the Federal Government under art 15A in respect of the appellant remains with the executive government.
>
> [29] But, that is not to say that the court may not refer to that decision in the course of its deliberations on the appellant's application. Neither can it be right nor may it be suggested to be the intention of Parliament as set out in s 2 above, that the court cannot make any pronouncements on citizenship under Part III of the Federal Constitution. Matters concerning citizenship, as are a whole host of other subject matters found in the Federal Constitution are within the purview of the courts. It is only the decisions of the Federal Government under Part III that are not open to appeal or review in any court.
>
> [30] In the originating summons filed by the appellant, the appellant sets out her prevailing facts and conditions before she invites the court to make certain declaratory orders on her status in respect of her claim for citizenship. When considering such an application, the court is far from sitting on appeal or review, let alone appeal or review of a decision already made by the Federal Government under Part III of the Federal Constitution. We, therefore, do not agree with the learned judge in this regard.

[39] Although *Madhuvita*'s case was not approved by the majority of the Federal Court in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236, there is nothing in the subsequent judgment that challenges the use of originating summons in seeking a declaratory remedy under art 14 as the heart of the argument put forward by the Federal Court in disagreement with *Madhuvita*'s case is only on whether an illegitimate child can be legitimised by the subsequent marriage of his parents. Therefore, the principle enunciated in *Madhuvita* above on the court's jurisdiction to interpret the provisions of the Federal Constitution and to make pronouncements or declarations on the fundamental constitutional right to citizenship stands and is good law.

[40] In the instant case, the plaintiffs are not applying for a judicial review of the Minister's decision or to challenge decision of the Minister concerning citizenship. The Minister did not make any decision to revoke the plaintiff's citizenship. The plaintiffs are seeking an interpretation of the provisions of the Federal Constitution which directly impacts on the constitutional rights of the

plaintiff to citizenship by operation of law. In the case of *CTEB* cited by the defendants, the application which was made by originating summons involves the interpretation of art 14(1)(b) of the Federal Constitution and declaration of the right to citizenship by operation of law. The Federal Court in *CTEB* did not hold that the originating summons therein is the wrong mode of commencement of proceedings and the application must be made by way of judicial review. Thus, the court finds that the preliminary issues raised by the defendants is without merit and the court has jurisdiction to hear and adjudicate the present application.

[41] The core issue in this case is whether the plaintiff has satisfied the requirement for citizenship by operation of law under art 14(1)(b) read with s 1(a) and/or s 1(e) of Part II of the Second Schedule of the Federal Constitution. As this issue involves the consideration and interpretation of the fundamental rights and provisions of the Federal Constitution, this court is guided by the principles on interpreting a constitution enunciated in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 at p 32, by Raja Azlan Shah Ag LP (as His Royal Highness then was):

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21. A constitution is sui generis, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation.

[42] In *CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71; [2022] 1 CLJ 1, the Federal Court (per Tengku Maimun Tuan Mat CJ) held:

> [49] We believe that the answer to the question has been discussed an innumerable amount of times with the most recent being *CTEB*. The starting point is the understanding that fundamental rights and provisions must be construed as broadly as possible. Next, provisions which limit those rights must be construed as narrowly as possible. Finally, judicial precedent must play a lesser part when construing constitutional provisions. One cannot afford to be pedantic or cling helplessly to tabulated legalism.
>
> [50] When construing a word or words in the FC protective of or guaranteeing a fundamental right, the court should give their widest possible meaning without changing or warping the 'base' meaning. And when construing interrelated

provisions, the court should read them as a whole having regard to the purpose and intent of those provisions and harmonise their collective meaning rather than put them at odds with another.

The material constitutional provisions

[43] The following are the main constitutional provisions that needs to be considered in the course of adjudicating the present application:

Article 14(1)(b) of the Federal Constitution

14 Citizenship by operation of law

(1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:

(a) ...

(b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

Part II of the Second Schedule of the Federal Constitution

Citizenship by operation of law of persons born on or after Malaysia Day

1. *Subject to the provisions of Part III of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:*

(a) every person born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation;

...

(e) every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph.

2. (3) For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provisions corresponding to paragraph (c) of that section or otherwise.

26B General provisions as to loss of citizenship

(1) *Renunciation or deprivation of citizenship shall not discharge a person from liability in respect of anything done or omitted before he ceased to be a citizen.*

(2) No person shall be deprived of citizenship under Article 25, 26 or 26A unless the Federal Government is satisfied that it is not conducive to the public good that he should continue to be a citizen; and n*o person shall be deprived of citizenship* under Article 25, paragraph (b) of Clause (1) of Article 26, or Article 26A *if the Federal Government is satisfied that as a result of the deprivation he would not be a citizen of any country.*

27 Procedure for deprivation

(1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made *notice in writing informing him of the ground on which the order*

is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order.

Whether there is revocation and deprivation of citizenship

[44] It is not disputed that the citizenship of the plaintiff in her first birth certificate (SA3) was citizen of Malaysia (*warganegara*). It is evident from the plaintiff's second birth certificate (exh SA5) which states that the plaintiff is a non-citizen (*bukan warganegara*), the plaintiff was deprived of her citizenship by way of an amendment to her birth certificate on or about 5 February 2020 after she went to apply for a National Registration Identity Card (NRIC) on or about 3 October 2018. The said amendment was apparently made by the third defendant under s 30(2) of the Registration of Births and Deaths Ordinance (Cap 123) of Sabah (RBDO).

[45] Due to failure of the plaintiff's parents to promptly report or furnish information as to the plaintiff's birth and late registration, the plaintiff applied under s 22(3) of the RBDO in BE Case No BKI-13BE-85/7 of 2018 for the facts or details in the plaintiff's first birth certificate to be verified and be receivable in evidence. The details of the plaintiff as stated in the first birth certificate has been verified by the court at an inquiry in BE Case No BKI-13BE-85/7 of 2018 and the same was accepted in evidence on 23 June 2018. See exh SA3. The unilateral amendment of the status of the plaintiff from citizen in the first birth certificate to non-citizen in the second birth certificate is tantamount to a plaintiff was not given any prior notice of deprivation of her citizenship.

[46] After perusing the RBDO, it is observed that there is no provision therein that empowered the JPN or the Registrar of Births and Deaths to revoke the applicant's citizenship by amending her birth certificate.

[47] The provisions and procedure for deprivation of citizenship are set out in arts 24, 25, 26, 26A, 26B and 27 of the FC. In *Yong Lee Hua @ Piang Lin v Director of National Registration Sabah & Anor* [2011] 3 MLJ 684; [2010] 1 LNS 1018, the High Court held:

The *power to revoke a citizenship lies with the Federal Government* and *not the first defendant and the revocation can only be ordered on grounds stated in arts 24, 25, 26, 26A of the Constitution.* The *procedure for deprivation of citizenship is provided in art 27*, as follows:

> 27(1) Before making an order under Article 24, 25 or 26, the *Federal Government shall give* to the person against whom the order is proposed to be made *notice in writing informing him of the ground* on which the order is proposed to be made *and of his right to have the case referred to a committee of inquiry* under this Article.
>
> (2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.
>
> (3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order.

In the instant case there is no evidence that the first defendant had taken any step to revoke the plaintiff's citizenship. Even if the first defendant had wanted to *there is nothing in the National Registration Act 1959 (Revised 1972) ('the Act') that empowers him to do so.* The preamble to the Act makes it clear that the purpose of the legislation is *only to provide for registration of persons in Malaysia, the issuance of identity cards* and for purposes connected therewith. *Depriving one's citizenship is clearly not within the purview of the first defendant.*

[48] In *Tan Lee Heng & Anor v Ketua Pengarah, Jabatan Pendaftaran Negara & Ors* [2019] 8 CLJ 865, the facts are quite similar to the present case. In *Tan Lee Heng*'s case, the second applicant's birth certificate was amended from citizen to non-citizen of Malaysia by the JPN when the second applicant went to the JPN to apply for a MyKad card after attaining 12 years of age and the amendment of citizenship was made on the ground that the second applicant was born illegitimate to a non-Malaysian mother. The High Court held:

> (1) Under s 27(3) of the Act, any amendment to a birth certificate may be made after the requirements set in the provision has been fulfilled. The requirements, inter alia, are: (i) the production of a statutory declaration, setting forth the nature and error to be corrected and the true facts of the case by the person requiring such error to be corrected; and (ii) made by two persons required by the Act to give information concerning the birth; or (iii) by two credible persons having knowledge of the truth of the case. Section 27(3) of the Act also provides that the *amendment to be made without any alteration to the original entry. What is most important about this provision is that the amendment must be upon the request of the person who wanted any information, in the birth certificate, to be amended.*
>
> (2) The first applicant made an application for MyKad for the second applicant and filled up the application forms. It was devoid of logical sense that, at the same time,

the first applicant applied for the amendments of the second applicant's birth certificate, which adversely affected her status. The effect of the amendments clearly barred the first applicant from obtaining the second applicant's MyKad, which was the only reason the applicants came to the NRD. The first applicant's explanation, that he was asked to fill up certain forms which he thought were in relation to the MyKad application, was accepted. *The amendments were not sought for by the first applicant and the amendments were not due to any clerical or technical error*. Additionally, *the amendments altered the original entry in the birth* certificate. This clearly was not in accordance with the provision of s 27(3) of the Act.

(3) *The second applicant was registered as a citizen of Malaysia and issued a MyKid by the first respondent. The question that arose was: which provision of the law empowered the first respondent to revoke the second applicant's citizenship by amending her birth certificate?* The first respondent's averment, that the amendments were made pursuant to s 27(3) of the Act, was an error of law. Although a citizenship may be terminated in accordance with Chapter II of the FC, in particular under art 126, *this was not relied upon by the first respondent.*

(5) The decision of the first respondent was tainted with error of law, irrationality and unreasonableness which warranted a curial intervention of the court. Further, the *first respondent's decision to amend the second applicant's birth certificate, which had the effect of, inter alia, revoking her citizenship, was set aside.*

[49] Section 30(2) and (3) of the RSBO provides as follows:

(2) Except as provided in subsection (4) *any clerical error* which may be discovered in any register shall be corrected by the Registrar who shall initial the entry in which such error has been discovered.

(3) *Any error of fact or substance* in any register may be corrected by entry (but so that no alteration on the original entry is made) by a Registrar on payment of the prescribed fee and on the production to him by the person requiring such error to be corrected of a *statutory declaration setting forth the nature of the error and the facts of the case and made by two persons required by this Ordinance to give information concerning the birth or death* with reference to which the error had been made, or, in default of such persons, then by two credible persons, to the satisfaction of the Registrar, having knowledge of the truth of the case, and the Registrar shall initial such entry and shall add thereto the day and the month and the year when such correction is made.

[50] In the present case, the plaintiff or her sister did not apply to amend plaintiff's citizenship in her first birth certificate from citizen to non-citizen. The plaintiff had applied for a NRIC/MyKad after the facts and details in the plaintiff's first birth certificate were verified and accepted by the court in evidence on 23 June 2018 in BE Case No BKI-13BE-85/7 of 2018. No statutory declaration by the plaintiff for the amendment stating the nature of the error and the facts of the case as required by s 30(3) of the RBDO was produced or exhibited by the defendants in the affidavit in opposition. In the absence of any statutory declaration as required by the RBDO, there is no

evidence to show that the amendment was due to any clerical error or error of fact or substance. Further, the Jabatan Pendaftaran Negara (JPN) or the second and third defendant are not empowered by law to unilaterally revoke the plaintiff's citizenship by amending her birth certificate. Neither did the JPN or the defendants take any step to revoke the applicant's citizenship under art 24 to 27 of the Federal Constitution if they have valid grounds to do so. It is clear that the deprivation of the applicant's citizenship was not done in accordance with the procedure prescribed by art 27 of the Federal Constitution.

[51] In *Pham v Secretary of State for the Home Department* [2015] 3 All ER 1015, the citizenship status of a person was described by Lord Reed as one of 'fundamental importance'. In *The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals* [2020] 4 MLJ 303; [2020] 3 CLJ 757, the Federal Court held that:

> The *deprivation of citizenship is a severe form of action against a citizen* for having acquired foreign citizenship and reflected how seriously the FC views the act.

[52] Based on the evidence and the law stated above, this court finds that the defendant's unilateral amendment of the plaintiff's status from citizen to non-citizen in the second birth certificate which has the effect of revoking and depriving the applicant of her citizenship is clearly not in accordance with the requirements in art 27(1) of the Federal Constitution and is therefore, unconstitutional, null and void.

Whether the plaintiff is entitled to citizenship by operation of law

[53] It is not disputed that the plaintiff's biological father (Yusuf bin Mahmud NRIC No 631024–13–5649) is a Malaysian citizen. There is a dispute on whether or not the Khamsia bt Ridwan (Khamsia) is the plaintiff's biological mother and whether Khamsia is a citizen. The plaintiff has produced the plaintiff's first and second birth certificate issued by the second and third defendants which shows that Khamsia is the biological mother of the plaintiff. However, the citizenship status of Khamsia in the first birth certificate is stated as yet to be determined (*belum ditentukan*) and in the impugned second birth certificate, it is stated that Khamsia is a non-citizen (*bukan warganegara*).

[54] The plaintiff's *Rekod Kesihatan dan Perkembangan Kanak-Kanak* (described as 'Kad Klinik') from Kementerian Kesihatan Malaysia (exh SA2) produced and exhibited by the plaintiff shows that the plaintiff's mother is Khamsia Ridwan and the identity card number of the plaintiff's mother is 'H0956640'. The affidavit evidence shows that the said Kad Klinik Kanak-Kanak was produced to the court during the inquiry in BE Case No BKI-13BE-85/7 of 2018 and also given to the National Registration

Department during the application for the birth certificate (first birth certificate) in 2007. The Kad Klinik contain medical records of the plaintiff's birth from the time of the plaintiff's birth and the name and NRIC number of the plaintiff's biological mother. The defendants have vast resources and is in a position to check with the relevant health department or clinic on the authenticity or veracity of the said Kad Klinik but they did not do so despite being given the Kad Klinik Kanak-Kanak in 2007. Apart from denying any knowledge of the plaintiff's Kad Klinik, the defendants did not adduce any evidence to show that the plaintiff's Kad Klinik is not genuine or inaccurate.

[55] The NRIC/MyKad of Khamsia bt Ridwan issued by the National Registration Department (exh SA1) shows that the identity card number (H0956640) stated in the said Kad Klinik is the same as and/ or refers to the MyKad bearing new NRIC number 770922-12-5426 issued by JPN to Khamsia. There is no dispute that the MyKad issued to Khamsia is genuine and the said identity card is issued to a citizen of Malaysia. There is also evidence from the Elections Commission to show that Khamsia is a registered voter (DUN-Balung and Parlimen-Tawau, Negeri Sabah). See exh SA8.

[56] As alluded above, the details of the plaintiff including her biological parents in the first birth certificate has been verified by the court in BE Case No BKI-13BE-85/7 of 2018 to be accurate and accepted in the evidence on 23 June 2018. See exh SA3. There is no evidence adduced by the defendants in the affidavit in opposition to prove that the said Kad Klinik is not issued by Kementerian Kesihatan Malaysia and the details in the said card is inaccurate or false. Hence, the court finds that the plaintiff has adduced credible evidence and has discharged her onus of proof under s 101 of the Evidence Act 1950 in proving on a balance of probabilities that the said Kad Klinik is authentic and the details stated therein including the name and NRIC number of the plaintiff's biological mother are correct. The NRIC/MyKad of Khamsiah shows that Khamsiah is a citizen (*warganegara*). See exh SA1. In the premises, the Affidavit evidence shows that the plaintiff has satisfied the requirement of 'jus soli' and 'jus sanguine' and is eligible and/or entitled to citizenship by operation of law under art 14(1)(b) read with s 1(a) of Part II and s 17 of Part III of the Second Schedule of the Federal Constitution.

[57] It is trite that to claim citizenship under the framework of the Federal Constitution, one must fulfil the legal requirements of jus soli and jus sanguinis. The plaintiff referred to the minority decision pronounced by Her Ladyship, Chief Justice Tengku Maimun in *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 where Her Ladyship said that:

> [55] To reiterate the above passage, jus soli encapsulates the notion that a person is entitled to citizenship purely on the basis of the place where he is born irrespective

of the citizenship status of his parents. Thus, if immigrant non-citizen parents from one country give birth to their child in a country which adopts the principle of only jus soli, the child is automatically a citizen of that country by the fact of his birth there. Jus sanguinis on the other hand looks only to the citizenship status of the parent irrespective of where the child was born. So long as the parent (sometimes the father only and other times either parent) is a citizen, the child is automatically entitled to 'inherit' the citizenship status of that parent. As observed by Abang Iskandar JCA in the above quoted judgment, our FC amalgamates both jus soli and jus sanguinis into its provisions.

[58] Notwithstanding the above quoted is the minority judgment of our apex court, the Federal Court had thereafter in another decision in *CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child) v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71; [2022] 1 CLJ 1 where Her Ladyship, Tengku Maimun Tuan Mat CJ held that:

> [44] The principles of jus soli and jus sanguinis as well as the principles on how the FC was drafted to enable citizenship as broadly as possible while weeding out statelessness have been discussed in great length by the minority of this court in *CTEB* . We adopt the reasoning there as part of this judgment being the only other decision of the Federal Court apart from this one, to our knowledge, to have touched on this issue most recently.

[59] After perusing the defendant's affidavit in opposition and submissions, it can be deduced that the defendants are contending that the plaintiff's biological mother is unknown. If that were the case (which this court had found otherwise), the provision of s 1(e) of Part II of the Second Schedule would become relevant. In the event that this court has erred in finding that the plaintiff's biological mother is Khamsia and the said Khamsia is a citizen, the court will proceed to consider whether the plaintiff satisfies the requirement in art 14(1)(b) read with s 1(e) and s 2(3) of Part II of the Second Schedule of the Federal Constitution.

[60] There is no evidence adduced by the defendants to show that the plaintiff's biological mother is a citizen of another country despite the plaintiff's production of her Kad Klinik containing the name and details of the plaintiff's biological mother and the medical records of the plaintiff's birth.

[61] Section 1(e) provides as follows:

> 1. Subject to the provision of Part II of this Constitution, the following persons born on or after Malaysia Day are citizens by operation of law, that is to say:
>
> ...
>
> (e) Every person born within the Federation who is not born a citizen of any

country otherwise than by virtue of this paragraph ... A

[62] Section 2(3) of Part II of the Second Schedule of the Federal Constitution provides:

> For the purposes of paragraph (e) of section 1 a person is to be treated as having at birth any citizenship which he acquires within one year afterwards by virtue of any provision corresponding to paragraph (c) of that section or otherwise. B

[63] Unlike s 1(a) of Part II, s 1(e) does not contain the words 'whose parents one at least is at the time of birth either a citizen or permanently resident in the Federation'. The main criteria in s 1(e) is whether the person born in Malaysia is 'born a citizen of any country'. In the instant case, it is undisputed that the plaintiff was born in Malaysia and her biological father is a citizen. It is also undisputed that the plaintiff had lived in Malaysia all her life and continues to live in Malaysia. There is no evidence from the defendants to show that the plaintiff was born a citizen of any other country. C D

[64] In order to substantiate their contention that the plaintiff follow the foreign citizenship of her biological mother and is not stateless, the defendants should adduce cogent evidence from the relevant foreign embassy or consular office to show what is the nationality and/or citizenship of the biological mother and whether the plaintiff had been accorded citizenship of a foreign country. However, the defendants failed to do so. In the absence of any evidence to show that the plaintiff or her biological mother was registered with or recognized by the relevant foreign embassy or government as a citizen of such foreign country within one year or at any time, there is no evidence to show that the plaintiff was born a citizen of another country. In fact, the plaintiff's birth was registered in Malaysia and her citizenship status as stated in the impugned second birth certificate is 'Bukan Warganegara'. Hence, if the plaintiff is not a citizen of Malaysia, she will be stateless. E F G

[65] In *Farah Hani Sukor v Ketua Pengarah Jabatan Pendaftaran Negara, Malaysia & Ors* [2023] MLJU 993; [2023] 1 LNS 898, the High Court (per Wan Ahmad Farid Wan Salleh J) held: H

> [14] A person can be a citizen of Malaysia by operation of law under art 14(1) read together read with s 1(e) Part II Second Schedule of the FC (for brevity, it will be referred to as 's 1(e)'). For s 1(e) to be applicable, the conditions precedent are as follows: I
>
> (a) The applicant was born on or after Malaysia Day;
>
> (b) The applicant was born within the Federation; and
>
> (c) The applicant was not born a citizen of any country.

A ...

[25] In the absence of conclusive proof that the plaintiff's biological mother is a citizen of Singapore, the only logical conclusion is that, based on jus sanguinis, the plaintiff has established that she is not a citizen of any country within the meaning of s 1(e).

B

[26] It should be noted that citizenship by operation of law is a birthright -a fundamental and constitutional right that leaves absolutely no room for the use of discretion; *CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors* [2021] 4 MLJ 236 (FC).

C [27] Consequently, the uncertainty of the citizenship of the plaintiff's biological mother at the time of the plaintiff's birth has rendered the plaintiff a stateless person as envisaged under s 1(e). This qualifies the plaintiff as a citizen of Malaysia by operation of law.

D **[66]** In *LKP & Anor v Pendaftar Besar Kelahiran dan Kematian, Malaysia* [2023] 9 MLJ 242; [2023] 3 CLJ 243, the High Court (per Faizah Jamaludin J) held:

[58] The fact that she was registered by the defendant after her birth as a Malaysian citizen, albeit based on false information provided by the first plaintiff, means that it would have been legally impossible for her, to have acquired within one year after her birth, the citizenship of any other country by virtue of any provision corresponding to s 1(c) of Part II of the Second Schedule of the FC or otherwise.

E

[59] Therefore, I find that LSY, who was a Malaysian citizen since her birth until it was revoked by the defendant when she was 12 years old, could not have acquired and did not acquire the citizenship of any other country within one year from her birth. Thus, she is a citizen of Malaysia by operation of law pursuant to art 14(1)(b) and s 1(e) and s 2(3) of Part II of the Second Schedule of the FC.

F

G **[67]** In *Tan Lee Heng & Anor v Ketua Pengarah, Jabatan Pendaftaran Negara & Ors* [2019] 8 CLJ 865, the High Court (per Nordin Hassan J) held:

In addition to that, the second applicant was not a citizen of Indonesia as she was born in Malaysia and her birth was registered in Malaysia. If the second applicant was not a citizen of Malaysia, she would then be stateless and this would not be in her best interest and welfare. This triggered the application of art 14(1)(b) read with s 1(e), Part II, Second Schedule of the FC.

H

[68] In *OXT (a child applying through Ong Chin Hock, the biological father) v Pendaftar Besar Kelahiran dan Kematian Malaysia & Anor* [2022] 11 MLJ 373; [2022] 6 CLJ 274, the High Court (per Abdul Wahab Mohamad J) held:

I

(5) The consideration point of s 1(e) criteria is 'not born a citizen of any country', meaning the applicant must first have already attained the citizenship of another country at birth before the applicant could be entitled to qualify under s 1(e). The FC had provided a deeming provision in s 2(3) which says that for a period of one

year after the person's birth, any citizenship that person acquires would be the deemed citizenship at birth. The applicant was stateless because she had no other citizenship apart from her classification as 'Bukan Warganegara' in her birth certificate. Furthermore, she had no other citizenship of any other country after one year of her birth and would automatically be entitled to citizenship by operation of law.

(6) The applicant had satisfied the qualification of Part II, s 1(e) and ought to be entitled automatically by operation of law to be a Malaysian citizen. As in the case of the qualification under Part II, s 1(a), since the applicant had satisfied the first criteria of art 14(1)(b) of the FC, a satisfaction of either one or both of the criteria in s 1(a) or 1(e) would enable her to attain citizenship.

[69] In *Madhuvita Janjara Augustin* above, the Court of Appeal (per Mary Lim JCA, as Her Ladyship then was) held:

[70] Learned counsel for the appellant submitted that the appellant has lived all her life in the Federation, and that she has no intention of applying for citizenship of the Independent State of Papua New Guinea. In any case, the Citizenship Act 1975 of Papua New Guinea requires the registration of birth overseas to be made within one year after the birth or with the consent of the Minister, at any time after the end of that period, and this has not been done.

...

[77] Coming back to the present appeal, in support of her application, the appellant has shown that she is not a citizen of Papua New Guinea. The appellant's birth was not registered in Papua New Guinea. It was registered here instead. We agree with the submissions of learned counsel for the appellant that if the declaration sought is not given, if the appellant is not a citizen of the Federation, then she is stateless. That state would not and cannot be said to be in the best interest and for the welfare of the appellant. Consequently, the appellant satisfies the terms of art 14(1)(b) read with s 1(e) of Part II of the Second Schedule to the Federal Constitution.

[70] It was pointed out by the parties that *Madhuvita*'s case was not approved by the majority decision of the Federal Court in *CTEB*. A careful reading of the majority judgment in *CTEB* shows that the interpretation of s 1(a) of Part II by the Court of Appeal in *Madhuvita* in relation to the time to determine the legitimacy or otherwise of a child was disapproved by the majority of the Federal Court. However, the interpretation of the requirement 'not born a citizen of any country' in s 1(e) of Part II by the Court of Appeal in *Madhuvita* did not receive the same or any disapproval by the majority or minority in *CTEB* and this part of the decision on the application s 1(e) was not reversed and remains good law.

[71] In *CCH* above, the Federal Court observed that:

[44] The principles of jus soli and jus sanguinis as well as the principles on how the *FC was drafted to enable citizenship as broadly as possible while weeding out statelessness*

A have been discussed in great length by the minority of this Court in *CTEB* . We adopt the reasoning there as part of this judgment being the only other decision of the Federal Court apart from this one, to our knowledge, to have touched on this issue most recently.

B ...

[46] Citizenship no doubt is governed by Part III of the FC, but it is also a concept so inextricably linked to the right to life and personal liberty contained in art 5(1). As such, any provisions on it must be construed as widely as possible.

C **[72]** The undisputed evidence in the present case shows that the plaintiff is not born a citizen of any country at the time of her birth on 19 November 2001. She was registered as a citizen in her first birth certificate on 13 February 2007 and her citizen status was changed to non-citizen in the second birth certificate on 5 February 2020 by the third defendant. Applying the principles D of broad construction enunciated in *CCH* to s 1(e) of Part II, the court finds that the plaintiff has satisfied the requirement in s 1(e) in that she was born in the Federation after Malaysia day and is not born a citizen of any country. Neither have the plaintiff been accorded citizenship of any country within one year of her birth. Although the plaintiff have lived all her life in Malaysia, she E is classified as Bukan Warganegara in her second birth certificate. If the plaintiff is not a citizen of Malaysia, she will be stateless. This would not be in the best interests and welfare of the plaintiff. In the premises, the plaintiff qualifies for citizenship by operation of law pursuant to art 14(1) (b) read with s 1(e) and F s 2(3) of Part II of the Second Schedule of the Federal Constitution.

[73] In the final analysis, the court finds that the plaintiff is eligible to Malaysian citizenship by operation of law under art 14(1)(b) of the Federal Constitution and was registered as a citizen in her first birth certificate in 2007 G until her citizenship was revoked by amendment of her first birth certificate in 2020. Thus, the defendants' contention that there is no deprivation of the plaintiff's citizenship because the plaintiff is not entitled and/or eligible to citizenship of Malaysia by operation of law under art 14(1)(b) is without merit.

H **[74]** The case of *CTEB* relied upon by the defendant involves a child whose biological mother was a Filipino citizen when the child was born in the Philippines. The child held a Philippines passport which raised the presumption that he was a citizen of the Philippines. In the present case the I plaintiff is classified as 'Bukan Warganegara' and does not have a MyKad and/or a Malaysian or any foreign Passport. She is a stateless person who is now applying for a declaration of her right to Malaysian citizenship by operation of law. Thus, the case of *CTEB* is distinguishable from the facts of the present case.

CONCLUSION

[75] Based on the aforesaid reasons, encl 1 is allowed with no order as to costs. In the premises, there shall be judgment for the plaintiff against the defendants as follows:

(a) a declaration that the plaintiff's birth certificate No 2 (SB 361240 (Serial number No 118897 XAH)) issued on 5 February 2020 by the second and/or third defendant where the plaintiff was registered as non-citizen is tantamount to a revocation of the plaintiff's citizenship made in contravention of Chapter II and the procedures in art 27 of the Federal Constitution and is null and void;

(b) a declaration that the applicant is a citizen of Malaysia pursuant to the birth certificate No 1 (No Daftar SB 361240)/NRIC No 011119–12–1496 issued on 13 February 2007 and/or by operation of law under art 14(1)(b) read with section s 1(a) and/or (e) Part II of Second Schedule of Federal Constitution and/or s 17 of Part III of the Second Schedule of the Federal Constitution; and

(c) that the first defendant and/or second defendant and/or third defendant reinstate the plaintiff's birth certificate No 1 (No Daftar SB 361240) issued on 13 February 2007 which states that the plaintiff is a 'Warganegara'.

Order accordingly.

Reported by Ashok Kumar